

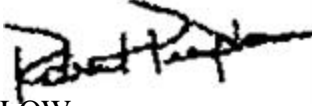
Memorandum

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To: DEPUTY DISTRICT DIRECTORS, Construction
CONSTRUCTION MANAGERS
SENIOR CONSTRUCTION ENGINEERS
RESIDENT ENGINEERS, Construction

Date: March 14, 2003

File: Division of Construction
CPD 03-5


From: ROBERT PIEPLOW
Chief
Division of Construction – MS 44

Subject: Notice of Potential Claim and Final Payment and Claim Changes – Notification Letter

The California Department of Transportation (Department), has revised Sections 9-1.04, "Notice of Potential Claims," and 9-1.07B, "Final Payment of Claims," of the *Standard Specifications*. These changes have been implemented in all construction contracts with advertisement dates later than December 9, 2002. The revisions are in the form of amended to read sections and are located in section 1 of the affected contracts' special provisions. The primary purpose of this memorandum is to explain the significant changes to the attached specifications.

The revised specifications are part of the Department's objective of improving dispute resolution processes. The construction industry and the Department have both expressed concerns with the timeliness and quality of dispute processes traditionally utilized. The Department has frequently not obtained sufficient and timely information through the contractor's potential claim submittals. In these instances, the Department's ability to make a timely determination on the merits of the potential claim is often negatively impacted. Likewise, the construction industry has voiced their concerns that the Department, on occasion, has failed to provide timely responses to notice of potential claims and does not fully address the dispute until after acceptance of the contract. In addition, the construction industry has pointed to the Department's performance in addressing claims within the post-acceptance period and has aggressively pursued legislation to alter the Department's claim resolution process. Both the Department and the construction industry are eager to continually improve dispute resolution specifications and processes.

The primary modifications are contained in an amended to read of Section 9-1.04, "Notice of Potential Claims," of the *Standard Specifications*. These revisions set forth prescriptive requirements for the submittal of potential claims in terms of the information to be submitted. In addition, contractual timeframes for the submittals and responses thereto have been contractually defined for both the

contractor and the engineer. The Department will continue to stress the importance of providing detailed and timely responses to the contractor's potential claim submittals with the objective of reducing post-acceptance resources and expenses in evaluation of the same dispute issue that has become a claim. The primary changes in Section 9-1.04 are highlighted as follows:

- ◆ The revised notice of potential claims process includes the initial notice of potential claim (form CEM 6201A), supplemental notice of potential claim (form CEM 6201B), and full and final documentation of potential claim (form CEM 6201C). These forms have been attached for convenience and may be obtained electronically through form management's site at (<http://adsc.caltrans.ca.gov/CEFS/>).
- ◆ An exclusive identification number will be assigned to each dispute, which will be used to track the dispute throughout its life and ensure the basis of the dispute remains constant.
- ◆ The initial notice of potential claim is to provide early notice of the dispute. This notice is required to be submitted within 5 days of when the dispute first arose.
- ◆ The supplemental notice of potential claim provides the contractor's basis for the dispute on which the engineer will make a determination of merit and provides the estimated cost and impacts of the dispute. The submittal of this notice is required within 15 days of the initial notice of potential claim. The engineer will evaluate the information presented and provide a written response within 20 days of receipt of the supplemental notice of potential claim.
- ◆ The full and final documentation of potential claim provides the contractor's complete and detailed quantification of the dispute once the related work has been completed. This submittal is required within 30 days of completion of the work related to the potential claim. The engineer will evaluate the information presented and provide a written response within 30 days of receipt of the full and final documentation of potential claim, unless otherwise specified.
- ◆ The contractual language pertaining to waiver of potential claims and claims, as well as bar to arbitration, has been strengthened for the contractor's failure to follow the contractual dispute procedure.

Other significant modifications are contained in an amended to read of Section 9-1.07B, "Final Payment of Claims," of the *Standard Specifications*. It is anticipated that these changes in combination with aforementioned potential claim revisions will further assist the Department in meeting its statutory obligation of providing the final determination of claims within 240 days of contract acceptance. The primary changes in Section 9-1.07B are highlighted as follows:

- ◆ The revised claims procedure constrains exceptions to the proposed final estimate, excluding administrative or overhead issues, to the exclusive identification number previously provided and the corresponding compensation amount requested. These changes will require the contractor maintain a consistent basis of claim and will allow the Department to respond in a timely manner.

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- ◆ The bar to arbitration language has been strengthened for the contractor's failure to follow the contractual dispute procedure.
- ◆ The board of review meeting timeframes have been clarified.
- ◆ The requirement that the Department send the district director's final determination to the contractor has been added.

The Division of Construction is presently in the process of making other significant changes to dispute resolution processes and is planning to incorporate all of the significant changes into a forthcoming *Construction Manual* insert.

If you have any questions regarding these changes, please do not hesitate to contact Scott Jarvis at (916) 651-6284, or myself at (916) 654-2157.

Attachments

c: District Directors
BFelker; RBuckley; DValls

bc: RPieplow; GMallette; SJarvis; KDarby
CPD folder; Subject File; Author File (Darby)

KD:jw